

Commissioners and Staff:

In its "Reply to Oppositions" filed on 24 August, 2005, the WCA selectively quotes LARIAT.NET's earlier filing and thereby gives a misleading impression of our position regarding the present petition for reconsideration. We'd like to clear up any potential confusion and also make one or two additional comments.

In its filing of 24 August, 2005, the WCA argues for exclusive licensing of the 3650 MHz band, quoting our comment in which we stated:

"Intel et al are correct when they write, 'when WISPs in congested areas attempt to use unlicensed, or nonexclusively licensed, bands - where there can be dozens or even hundreds of simultaneous users - 'tragedy of the commons,' or significant interference, issues tend to emerge often rendering the network virtually useless.'"

By stopping the quote at this point, the WCA gives a misleading impression of LARIAT.NET's position with regard to the petition under consideration. In fact, we went on to say:

"They are wrong, however, about the remedy.

"The remedy for this problem is not to remove from play the first spectrum that has the potential not to be plagued by it. The answer is not to eliminate the commons, but rather to mandate fair, efficient, and courteous use of it. This is why limiting the use of the band to outdoor wireless broadband (so that consumer devices will not knowingly or unknowingly interfere), and requiring a spectrum etiquette (which should be fleshed out and standardized), are key. The best future we see for this band -- and one that we fervently hope will come to pass -- is that it will ultimately be governed by a spectrum etiquette that allows WISPs to coexist gracefully without even having to be aware of one another's presence. We are, in essence, at a stage analogous to the early days of the automobile: We recognize the need for 'rules of the road,' but have yet to develop ones that work."

LARIAT.NET strongly opposes the WCA's proposal to move to the "exclusive licensing by auction" regime which has thus far utterly failed to enable the provision of wireless broadband.

In all such auctions, large, monied interests desiring to foreclose competition have bought up most or all of the licenses. This has been deleterious in several ways. Because these firms have deep pockets, they have prevented WISPs -- most of which are small and local -- from being able to secure spectrum. While the Commission has sought to level the playing field by providing bidding credits to small business entities, the large players have effectively circumvented such provisions. These large players value exclusivity so highly, and have such deep pockets, that the bidding credits provide little

advantage to small entities such as WISPS. What's more, in several cases they have obtained the bidding credits themselves by forming small subsidiaries and/or "shell companies." A good example is Alta Wireless, formed by Echostar to participate in the LMDS spectrum auctions. Shortly after the LMDS auctions concluded, we attempted to contact Alta Wireless so as to attempt to sublicense spectrum to serve our area. To our surprise, we found that the company had no full-time staff -- only a temporary employee, hired to answer the phone, who sat in office space owned by Echostar. The "company" was presented to the Commission as a small, woman-owned business, and thus got bidding credits. But in fact, it was 49% owned by Echostar, and the woman who supposedly owned a bare majority of the company could be reached not by calling the number in the company's auction application but rather by calling Echostar's corporate switchboard in Littleton, CO. In short, the company was a sham set up strictly to exploit the bidding credit. (We do not know what has happened to the company since that time, but since the rules had no prohibition against the remainder of the company being acquired by Echostar after the auction, we suspect that by now this is what has happened.)

We would like to see the Commission take appropriate action to reclaim this wrongfully obtained spectrum so that it can be put to productive use, as it sits utterly fallow in our area at the moment.

Furthermore, because so many of the winners of spectrum auctions simply "sit" on the spectrum and do not use it, it is impossible for equipment manufacturers to reach sufficient economies of scale to roll out reasonably priced, type approved equipment for the band. Thus, even WISPs which are able to prevail at auction cannot use the spectrum economically.

Finally, the geographic granularity of the auctions is not sufficient to allow WISPs, which often serve only a few counties, to bid. For example, while LARIAT was very interested in bidding in the recent MVDDS auction, we discovered -- to our dismay -- that the area that included our city of Laramie, Wyoming stretched southward to Denver and included several million people. While we might one day be able to serve such a large area, one cannot grow a business that big overnight and provide quality service. Nor could we easily gather the capital necessary to bid on a license to serve such a large population.

We, as WISPs, thus despair of obtaining spectrum via auction unless the auction rules are dramatically changed. We encourage the Commission to open, on its own initiative, an inquiry into doing so. But for the nonce, we'd like to see the licensing regime proposed in the FCC's recent Report and Order put to the test. We agree strongly with XO Communications' comments of 24 August, 2005 and ask the Commission to host, at its earliest convenience, a series of forums at which contention-based protocols for the band can be discussed and adopted.

Sincerely,

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